

Internal Revenue Service, Treasury

§ 31.3406(j)–1T

to reflect amounts withheld under section 3406. See § 31.6071(a)–1 for the time for filing the Form 945.

[T.D. 8637, 60 FR 66131, Dec. 21, 1995, as amended by T.D. 8881, 65 FR 32212, May 22, 2000]

§ 31.3406(i)–1 Effective date.

Sections 31.3406–0 through 31.3406(i)–1 (except §§ 31.3406(d)–5 and 31.3406(g)–1(c) and except for international transactions) are effective after December 31, 1996, and, optionally, for reportable payments made and transactions occurring on or after December 21, 1995. For the effective date of § 31.3406(d)–5, see § 31.3406(d)–5(i). Section 31.3406(g)–1(c) is effective before January 1, 1997. See §§ 35a.9999–0T through 35a.9999–5 of this chapter for rules that apply to international transactions after December 31, 1996.

[T.D. 8637, 60 FR 66133, Dec. 21, 1995]

§ 31.3406(j)–1 Taxpayer Identification Number (TIN) matching program.

(a) [Reserved]. For further guidance, see § 31.3406(j)–1T(a).

(b) *Notice of incorrect TIN.* No matching details received by a payor through a matching program will constitute a notice regarding an incorrect name/TIN combination under § 31.3406(d)–5(c) for purposes of imposing backup withholding under section 3406(a)(1)(B).

(c) *Application of section 3406(f).* The provisions of section 3406(f), relating to confidentiality of information, apply to any matching details received by a payor through the matching program. A payor may not take into account any such matching details in determining whether to open or close an account with a payee.

(d) *Reasonable cause.* The IRS will not use either a payor's decision not to participate in an available TIN matching program or the results received by a payor from participation in a TIN matching program implemented under the authority of this section as a basis to assert that the payor lacks reasonable cause under section 6724(a) for the failure to file an information return under section 6721 or to furnish a correct payee statement under section 6722. If the establishment of reasonable cause may be relevant to a substantial

number of the participants in a TIN matching program implemented under the authority of this section, the extent to which, if any, a payor may establish reasonable cause by participating in the TIN matching program will be set forth in the guidance establishing the program.

(e) *Definition of account.* *Account* means any account, instrument, or other relationship with a payor and with respect to which a payor has made or is likely to make a reportable payment as defined in section 3406(b)(1).

(f) [Reserved]. For further guidance, see § 31.3406(j)–1T(f).

[T.D. 8721, 62 FR 33009, June 18, 1997, as amended by T.D. 9041, 68 FR 4923, Jan. 31, 2003]

§ 31.3406(j)–1T Taxpayer Identification Number (TIN) matching program (temporary).

(a) *The matching program.* Under section 3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (see § 601.601(d)(2) of this chapter) or other appropriate guidance the scope and the terms and conditions of participating in any TIN matching program. In general, under a matching program, prior to filing information returns with respect to reportable payments as defined in section 3406(b)(1), a *payor* of those reportable payments who is entitled to participate in the matching program may contact the Internal Revenue Service (IRS) with respect to the TIN furnished by a payee who has received or is likely to receive a reportable payment. The IRS will inform the *payor* whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the data base utilized for the particular matching program. For purposes of this section, the term *payor* includes an agent designated by the *payor* to participate in TIN matching on the *payor's* behalf.

(b)–(e) [Reserved]. For further guidance, see § 31.3406(j)–1(b) through (e).

(f) *Effective date.* The provisions of this section are applicable on or after June 18, 1997, except the last sentence in paragraph (a) of this section which

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is applicable on January 31, 2003. The applicability of this section expires on January 30, 2006.

[T.D. 9041, 68 FR 4923, Jan. 31, 2003]

Subpart F—General Provisions Relating to Employment Taxes (Chapter 25, Internal Revenue Code of 1954)

§ 31.3501(a)-1T Question and answer relating to the time employers must collect and pay the taxes on noncash fringe benefits (Temporary).

The following questions and answers relate to the time employers must collect and pay the taxes imposed by subtitle C on noncash fringe benefits:

Q-1: If a noncash fringe benefit constitutes “wages” under section 3121(a), 3306(b), or 3401(a), or constitutes “compensation” under section 3231(e), when must an employer collect and pay the taxes imposed by Subtitle C?

A-1: For purposes of an employer’s liability to collect and pay the taxes imposed by Subtitle C, an employer may deem such fringe benefit to be paid at any time on or after the date on which it is provided, as long as such date is on or before the last day of the calendar quarter in which such benefit is provided. An employer may consider the benefit to be provided in two or more parts for purposes of the preceding sentence. For example, if a fringe benefit with a fair market value of \$1,000 is provided on January 1, 1985, the employer could deem \$500 paid on February 28, 1985 and \$500 paid on March 31, 1985.

With respect to noncash fringe benefits provided during the first calendar quarter of 1985, a special rule applies. Such benefits may be deemed paid at any time on or after the date on which they are provided as long as the date they are deemed paid is on or before the last day of the second calendar quarter of 1985.

In addition, for purposes of § 31.6302(c)-1(a)(1)(i), the term “tax” does not include the employer tax under section 3111 with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of any calendar quarter. For purposes of the first sentence of

§ 31.6302(c)-2(a)(1), the phrase “employer tax imposed after December 31, 1983, under section 3221 (a) and (b)” will not include any such employer tax with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of the quarter; provided that for purposes of deposits required under § 31.6302(c)-1(a)(1)(v), such first sentence applies to such noncash fringe benefits.

Notwithstanding anything in this section to the contrary, if an employer in fact withholds, the amount withheld is subject to the general deposit rules.

The manner in which and the time at which the employer withholds amounts from the wages of an employee to pay the taxes imposed under section 3101, 3201, and/or 3402 will generally be left to be determined by the employer and the employee. Any delay in withholding, however, does not affect the employer’s obligation upon the filing of an employment tax return, to pay amounts which would be due under this subtitle if the employer had withheld, with respect to noncash fringe benefits, the amount which would have been required to be withheld if such noncash fringe benefits had been paid in cash on the date the benefits were deemed paid. However, if such amounts are not withheld from the wages of an employee within a reasonable period after payment of the taxes by the employer, payment by the employer may be deemed additional compensation of the employee.

Q-2: Are any fringe benefits excepted from the rules contained in Q/A-1 of this section?

A-2: Yes. The rules contained in Q/A-1 of this section do not apply to the transfer of personal property (both tangible and intangible) of a kind held for investment or to the transfer of real property. Accordingly, an employer is liable for the collection and payment of taxes imposed by this subtitle when such property is transferred. For example, stock transferred in connection with the performance of services is paid, for purposes of this subtitle C, on the date the stock is transferred, i.e., on the date the stock vests pursuant to section 83 (absent a section 83(b) election).